

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 19, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROWEL R.,¹

Plaintiff,

v.

FRANK BISIGNANO,
Commissioner of Social Security,²

Defendant.

No. 1:24-cv-03197-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

Due to obesity, degenerative disc disease, right knee pain and swelling, vertigo, sleep disorders, hypertension, asthma, chronic

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

² Frank Bisignano was confirmed as the Commissioner of Social Security on May 6, 2025. Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), he is hereby substituted as the Defendant.

1 obstructive pulmonary disease, depression, and anxiety, Plaintiff Rowel
2 R. claims he is unable to work fulltime and applied for social-security
3 benefits. He appeals the denial of benefits by the Administrative Law
4 Judge (ALJ) on the grounds that the ALJ erred at step two in not
5 finding his depression and anxiety to be severe impairments, erred at
6 steps four and five, improperly analyzed credibility of Plaintiff's
7 subjective complaints, and improperly evaluated the medical opinion
8 evidence. As is explained below, the ALJ erred. This matter is
9 remanded for further proceedings.
10

11 **I. Background**

12 In May 2021, Plaintiff filed an application for benefits under Title
13 16, and in July 2021, Plaintiff filed an application for benefits under
14 Title 2, claiming disability beginning September 14, 2020, based on the
15 physical impairments noted above.³
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17 After the agency denied Plaintiff benefits, ALJ David Johnson
18 held a telephone hearing in April 2024, at which Plaintiff and a
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22 ³ AR 200, 210, 247.
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1 vocational expert testified.⁴ After the hearing, the ALJ issued a
2 decision denying benefits.⁵ The ALJ found Plaintiff's alleged symptoms
3 were not entirely consistent with the medical evidence and the other
4 evidence.⁶ As to medical opinions, the ALJ found:

- 5 • The opinions of state agency evaluator Matthew Comrie,
6 PsyD, to be persuasive.
- 7 • The opinions of state agency evaluator Rita F., PhD, to be
8 less persuasive.
- 9 • The opinions of DSHS consultative examiner David Morgan,
10 PhD to be not persuasive.⁷
- 11 • The February 2023 opinions of treating source Tim Ausink,
12 PASUP, to be somewhat persuasive.
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17 ⁴ AR 37-69.

18 ⁵ AR 14-36. Per 20 C.F.R. §§ 404.1520(a)–(g), 416.920(a)-(g) a five-step
19 evaluation determines whether a claimant is disabled.

20 ⁶ AR 24-26.

21 ⁷ AR 21-22.

- The June 2023 opinions of treating source Tim Ausink, PASUP, to be not persuasive.
- The opinions of consultative examiner Marquette Washington, ARNP, to be somewhat persuasive.
- The opinions of DSHS reviewing source Myrna Palasi, MD, to be persuasive.
- The opinions of state agency evaluator Dennis Kopukol, MD, to be not persuasive.
- The opinions of state agency evaluator Gordon H., MD, to be more persuasive.⁸

The ALJ also considered the third-party function report completed by Plaintiff's mother and found it to be not consistent with the record.⁹

As to the sequential disability analysis, the ALJ found:

- Plaintiff met the insured status requirements of the Social Security Act through December 31, 2025.

⁸ AR 27-28.

⁹ AR 28-29.

- 1 • Step one: Plaintiff had not engaged in substantial gainful
2 activity since September 14, 2020, the alleged onset date.
- 3 • Step two: Plaintiff had the following medically determinable
4 severe impairments: obesity, degenerative disc disease,
5 right knee edema, vertigo, sleep disorders, hypertension,
6 asthma, and chronic obstructive pulmonary disease.
- 7 • Also at step two, the ALJ found Plaintiff's mental
8 impairments to be non-severe.
- 9 • Step three: Plaintiff did not have an impairment or
10 combination of impairments that met or medically equaled
11 the severity of one of the listed impairments.
- 12 • RFC: Plaintiff had the RFC to perform a full range of
13 sedentary work that:
14 does not require climbing of ladders, ropes, or scaffolds;
15 that does not require more than occasional, stooping,
16 kneeling, crouching, crawling, or climbing of ramps or
17 stairs; that does not require concentrated exposure to
18 pulmonary irritants; and that does not require
19 exposure to hazards, open machinery, or unprotected
20 heights.
- 21 • Step four: Plaintiff was capable of performing past relevant
22 work as a system surveillance monitor.
- 23

- Step five: in addition to past relevant work the undersigned can perform other work available in the general economy.¹⁰

Plaintiff timely requested review of the ALJ's decision by the Appeals Council and now this Court.¹¹

II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"¹² and such error impacted the nondisability determination.¹³ Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such

¹⁰ AR 18-30.

¹¹ AR 275.

¹² *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

¹³ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that "is inconsequential to the ultimate nondisability determination").

1 relevant evidence as a reasonable mind might accept as adequate to
2 support a conclusion.”¹⁴

3 **III. Analysis**

4 Plaintiff seeks relief from the denial of disability on four grounds.
5 He argues the ALJ erred at step four when he found Plaintiff capable
6 of performing past relevant work, at step two when he found his
7 mental impairments non-severe, when evaluating Plaintiff’s subjective
8 complaints, and when evaluating the medical opinion evidence. The
9 Commissioner argues there was no error because the ALJ’s step-four
10 findings were proper and he offered alternate findings at step five, that
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14 ¹⁴ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978,
15 980 (9th Cir. 1997)). *See also Lingenfelter v. Astrue*, 504 F.3d 1028,
16 1035 (9th Cir. 2007) (The court “must consider the entire record as a
17 whole, weighing both the evidence that supports and the evidence that
18 detracts from the Commissioner’s conclusion,” not simply the evidence
19 cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d
20 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does
21 not indicate that such evidence was not considered[.]”).
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1 the ALJ properly found Plaintiff's mental impairments were not severe,
2 that the ALJ properly evaluated Plaintiff's subjective complaints, and
3 that the ALJ properly considered the medical opinion evidence. The
4 Court determines the ALJ erred at step four and that this error
5 impacted the ALJ's nondisability finding. Due to the step-four error,
6 along with an error at step two, the Court remands this matter for
7 further proceedings without addressing the remaining arguments.
8

9 **A. Step Four (Vocational Expert Testimony): Plaintiff**
10 **establishes consequential error.**

11 Plaintiff argues that the ALJ erred in relying upon the vocational
12 expert (VE) testimony to find that Plaintiff could return to his past
13 work because the VE later testified that he had offered an incorrect
14 sedentary job as past relevant work, based on Plaintiff's testimony that
15 he walked up to three hours and lifted up to 100 pounds.¹⁵ The
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17 Commissioner argues that the ALJ properly found that Plaintiff's PRW
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22 ¹⁵ ECF No. 8.
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1 was sedentary and that there was no harm because he offered an
2 alternate step five finding.¹⁶

3 1. Standard

4 At step four of the sequential evaluation process, a claimant
5 bears the burden of proving that he can no longer perform his past
6 relevant work (PRW).¹⁷ Notwithstanding the claimant's burden at this
7 step, the ALJ still has a duty to make the requisite factual findings to
8 support his conclusion regarding the claimant's ability to perform
9 PRW.¹⁸ The ALJ considers the claimant's background and RFC, along
10 with the testimony of the vocational expert, to decide whether the
11 claimant can perform available jobs notwithstanding his functional
12 limitations.¹⁹
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17 ¹⁶ ECF No. 9.

18 ¹⁷ *Pinto v. Massanari*, 249 F.3d 840, 844 (9th Cir. 2001).

19 ¹⁸ *Id.*

20 ¹⁹ 20 C.F.R. §§ 404.1520(g), 404.1560(c); *Tackett v. Apfel*, 180 F.3d
21 1094, 1100 (9th Cir. 1999); *Hill*, 698 F.3d at 1161.
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1 A claimant must be able to perform “[t]he actual functional
2 demands and job duties of a particular past relevant job” or “[t]he
3 functional demands and job duties of the occupation as generally
4 required by employers throughout the national economy.”²⁰
5 Accordingly, the ALJ must make specific findings as to 1) the
6 claimant’s RFC, 2) the physical and mental demands of the PRW, 3)
7 and the relation of the RFC to the PRW.²¹ The ALJ need only make
8 findings as to either actual or general performance of PRW, but not
9 both.²² The ALJ should generally consider first whether a claimant can
10 perform his PRW as actually performed and then as generally
11 performed.²³ An ALJ may rely on two sources to define a claimant’s
12 PRW as actually performed: “a properly completed vocational report . .
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16 ²⁰ *Id.* at 845 (citation omitted).

17 ²¹ *Id.*

18 ²² *Id.* (“We have never required explicit findings at step four regarding
19 a claimant’s [PRW] both as generally performed and as actually
20 performed.”).

21 ²³ *Id.*

1 . and the claimant’s own testimony.”²⁴ The best source for how a job is
2 generally performed is the Dictionary of Occupational Titles (the
3 “*Dictionary*” or “DOT”).²⁵]

4 If the vocational expert’s “opinion that the applicant is able to
5 work conflicts with, or seems to conflict with, the requirements listed
6 in the *Dictionary*, then the ALJ must ask the expert to reconcile the
7 conflict before relying on the expert to decide if the claimant is
8 disabled”:²⁶

10 For a difference between an expert’s testimony and
11 the *Dictionary*’s listings to be fairly characterized as a
12 conflict, it must be obvious or apparent. This means that the
13 testimony must be at odds with the *Dictionary*’s listing of
14 job requirements that are essential, integral, or expected.
15 This is not to say that ALJs are free to disregard
16 the *Dictionary*’s definitions or take them with a grain of
salt—they aren’t. But tasks that aren’t essential, integral,
or expected parts of a job are less likely to qualify as
apparent conflicts that the ALJ must ask about. Likewise,

17 ²⁴ *Id.*

18 ²⁵ *Id.* at 845–46; *see also* Social Security Ruling (“SSR”) 00–4p, 2000
19 WL 1898704, at *2 (noting that “we rely primarily on the DOT ... for
20 information about the requirements of work in the national economy”).

21 ²⁶ *Gutierrez v. Colvin*, 844 F.3d 804, 807 (9th Cir. 2016).

1 where the job itself is a familiar one—like cashiering—less
2 scrutiny by the ALJ is required.²⁷

3 The ALJ—and the reviewing court—are to consider not only the
4 *Dictionary* and its supplement, *Selected Characteristics of Occupations*
5 *Defined in the Dictionary of Occupational Titles* (SCO), but also
6 common experience, to determine whether there is an apparent
7 conflict.²⁸

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9 2. The ALJ's Findings

10 Here, the ALJ found that Plaintiff was capable of returning to his
11 past work and reasoned as follows:

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14 ²⁷ *Id.* at 808; *see also* SSR 00-4p (“When a [vocational expert] . . .
15 provides evidence about the requirements of a job or occupation, the
16 adjudicator has an affirmative responsibility to ask about any possible
17 conflict between that [vocational expert] . . . evidence and information
18 provided in the [*Dictionary*].”).

19
20 ²⁸ *Lamear v. Berryhill*, 865 F.3d 1201, 1205–06 (9th Cir. 2017); *see also*
21 SSR 00-4p (requiring the ALJ to consider the *Dictionary* and SCO);
22 SSR 83-14 (referencing the *Dictionary* and SCO).

1 The vocational expert classified the claimant's past work as
2 a Surveillance-System Monitor, Dictionary of Occupational
3 Titles #379.367-010, Specific Vocational Preparation 2,
4 sedentary exertional requirement. As required by SSR 82-62,
5 this work was substantial gainful activity, was performed
6 long enough for the claimant to achieve average performance,
7 and was performed within the relevant period.²⁹

8 The ALJ went on to state further that:

9 As for performing the work as actually performed, the
10 vocational expert noted that the claimant indicated in his
11 work history report that the maximum weight he lifted was
12 100 pounds or more while he frequently lifted 10 pounds,
13 but did not explain his lifting and carrying duties. The
14 vocational expert also discussed that this description was
15 not consistent with the claimant's other discussion of his job
16 description of monitoring closed-circuit televisions, using a
17 computer for reports, and using a phone for checking in
18 (4E/2). Based on the claimant's job description in his
19 disability report that he "spent most time monitoring
20 cameras[;]" walked for 0.5 hours a day, stood for 0.5 hours a
21 day, and sat for seven hours a day; and "did not typically
22 have to carry anything" and carried less than 10 pounds
23 (1E/4), the undersigned finds the claimant's past work as he
actually performed it required even less standing and
walking than the sedentary category, and therefore he is
capable of performing the Surveillance-System Monitor as
he actually performed it. Even if as he performed it the
work required lifting as the claimant asserted, the claimant
could still persist at the work as it is generally performed.
Even if the claimant was more limited than found in the
residual functional capacity above, the undersigned finds he
could persist in his past relevant work, as it is generally

²⁹ AR 29.

1 performed. The vocational expert testified it allowed for
2 periodic changes in position.³⁰

3 3. Vocational Expert Testimony

4 The following exchange took place between the VE and the ALJ:

5 Q Do you require any additional information regarding
6 [Plaintiff's] vocational background in the last 15 years before
7 testifying?

8 A No. Seems pretty clear cut.

9 Q Please identify the occupations he's performed in the last
10 15 years.

11 A From what I found in the record, it looks like he was
12 working as a Surveillance Monitor in security. The DOT
13 number on that is 379.367-010. That's listed as a sedentary
14 occupation, and it's unskilled, SVP: 2.³¹

15 The VE was then questioned by Plaintiff's attorney and the
16 following exchange took place:

17 EXAMINATION OF VOCATIONAL EXPERT BY
18 ATTORNEY:

19 Q . . . So first, I did want to ask you a little more
20 about the past relevant work. I found the work history
21 report in 4E, is that what you were basing your
22 classification on?

23 A Yes.

Q Okay. And I was just curious, I didn't hear whether,
perhaps you did say it, but I didn't hear, if you said that it
was performed more than sedentary as he performed it,

³⁰ AR 29-30.

³¹ AR 62.

1 but I just noticed on this form, he says he lifted up to 100
2 pounds, he was walking three hours a day. I just want to
3 make sure we're not classifying it, you know, as a wrong
4 DOT code. So with that in mind that he was lifting quite
a bit, walking more than three hours a day, I guess could
you just kind of explain that discrepancy for me?

5 A Yeah. I didn't note that. The main thing I saw was
6 observing security cameras from that description. I didn't
7 see walking three hours a day or lifting 100 pounds or
8 more. And I guess I'd need an explanation of why he would
9 be lifting 100 pounds or more on that. I did not have a
10 chance to interview him or talk to him about this. It
11 doesn't make sense, if he's being a security monitor, why
12 he would be walking or lifting 100 pounds. I mean, I don't
see where that fits in. If that's what he was doing, then I
would up it to a regular Security Guard position, or
whatnot, which would be light duty, and then it would
require the walking. I can't imagine what he would be
lifting that would be 100 pounds as a Security Guard. I
mean, it just doesn't make any sense to me.

13 Q Okay. Well, he had mentioned patrol as well, and I don't
14 know if that was a separate job, and maybe he" done both
separately, but I guess, what was the light duty Security
Guard that you mentioned?

15 A That would be, the DOT code on Security Guard that's
16 light duty is 372.667 038. It's light duty, and it's semi
skilled, SVP: 3.³²

17 4. Analysis

18 Here, the ALJ accepted the VE's initial testimony that Plaintiff's
19 PRW was that of a sedentary surveillance monitor without considering
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22 ³² AR 65-66.

1 his later testimony that he was initially mistaken and the position in
2 question was that of a light duty security guard. This is clearly
3 consequential error, because the ALJ's formulated RFC limited
4 Plaintiff to sedentary work.

5
6 The ALJ ignored the evidence that Plaintiff described that when
7 at his job he walked 3 hours per day and lifted as much as 100 pounds.
8 The ALJ reasoned that Plaintiff said he frequently carried only 10
9 pounds and walked and stood for 3 minutes a day, which was less than
10 sedentary.³³ But this was error because in his work history form
11 Plaintiff stated that he walked for 3 hours a day, sat for 4 hours a day,
12 lifted up to 100 pounds, stooped and kneeled for an hour each a day,
13 and handled objects up to one hour a day.³⁴ What Plaintiff described
14 does not fit the description of a job that is at the sedentary exertional
15 level.
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17 There was no attempt made by the ALJ at the hearing to clarify
18 Plaintiff's actual PRW on the record, despite the fact that the VE was
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21 ³³ AR 29.

22 ³⁴ AR 264.

1 present and able to testify. Additionally, even after the VE retracted
2 his testimony that Plaintiff's PRW was that of a surveillance monitor
3 and instead was that of a light exertional security guard, the ALJ did
4 not question the VE whether there were sedentary positions available
5 in the national economy that would fit the hypotheticals given. Instead,
6 the ALJ made his own determination post-hearing that such sedentary
7 jobs existed.
8

9 The ALJ reasoned:

10 If the claimant had the residual functional capacity to
11 perform the full range of sedentary work, a finding of "not
12 disabled" would be directed by Medical-Vocational Rule
13 201.24 and Rule 201.18. However, the claimant's ability to
14 perform all or substantially all of the requirements of this
15 level of work has been impeded by additional limitations.
16 However, SSR 96-9p states that postural limitations or
17 restrictions related to such activities as climbing ladders,
18 ropes, or scaffolds, balancing, kneeling, crouching, or
19 crawling would not usually erode the occupational base for a
20 full range of unskilled sedentary work significantly because
21 those activities are not usually required in sedentary work.
22 SSR 96-9p also states that few occupations in the unskilled
23 sedentary occupational base require work in environments
with extreme cold, extreme heat, wetness, humidity,
vibration, or unusual hazards, and even a need to avoid all
exposure to these conditions would not, by itself, result in a
significant erosion of the occupational base. Therefore, the
undersigned finds the non-exertional limitations in the

1 residual functional capacity would not significantly erode
2 the occupational base for the range of sedentary work.³⁵

3 Because work at the sedentary level is the most limited, and
4 therefore the smallest base of available jobs, there is usually VE
5 testimony obtained when an RFC limits a Plaintiff to the sedentary
6 exertional level. Rather than call a VE, the ALJ made his own
7 findings, utilizing the direction of SSR 96-9p. The ALJ erred, however,
8 in his analysis of SSR 96-9p. While he is correct that SSR 96-9p states
9 that both postural and environmental limitations will not significantly
10 erode the occupational base at the sedentary level, SSR 96-9p states
11 specifically that this is not the case for pulmonary restrictions such as
12 odors, dust, and gases and that when pulmonary restrictions are
13 included in the RFC those cases call for vocational expert analysis and
14 need to be evaluated on a case-by-case basis rather than a broad
15 reading, such as that made by the ALJ.³⁶

21 ³⁵ AR 30-31.

22 ³⁶ SSR 96-9p.

1 The error is of a particular significance in this case because the
2 ALJ specifically found that Plaintiff had the severe impairments of
3 asthma and COPD.³⁷ It was in order to account for Plaintiff's asthma
4 and COPD that the ALJ included into the formulated RFC a limitation
5 to concentrated exposure to pulmonary irritants, and for that reason
6 the limitation cannot be set aside or deemed inconsequential.³⁸ Because
7 Plaintiff suffered from two severe pulmonary impairments and the
8 formulated RFC included a limitation regarding pulmonary irritants,
9 this required the ALJ to obtain VE testimony regarding that issue.
10 The ALJ failed to obtain the VE testimony required. This error is
11 consequential, and remand is warranted to obtain clarifying testimony
12 from a vocational expert.
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15 On remand, the ALJ is directed to obtain VE testimony as to both
16 the proper classification of Plaintiff's PRW and, if a step-five finding is
17 necessary, the effect of all Plaintiff's limitations on his ability to engage
18 in substantial gainful activity.
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21 ³⁷ AR 20.

22 ³⁸ AR 24.
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B. Step two: direction to develop the record on remand.

Plaintiff argues that the ALJ erred in finding that Plaintiff's mental impairments were not severe. Because the Court has already concluded that remand is warranted, it will only briefly address the ALJ's step-two error.

The Court notes that while there was a consultative examination obtained regarding Plaintiff's physical impairments, no similar examination was scheduled to determine the severity of his mental impairments. This leaves a void in the record and constitutes consequential error because the medical record establishes that Plaintiff at least at one point during the relevant period had a severe mental impairment.

On July 20, 2021, Plaintiff presented to Timothy Ausink, PASUP.³⁹ Plaintiff reported he had been very depressed over the last 6-

³⁹ AR 366.

1 12 months.⁴⁰ On examination, PA Ausink notes that Plaintiff appeared
2 anxious and depressed and prescribed venlafaxine.⁴¹

3 On August 12, 2021, Plaintiff was examined by David Morgan,
4 PhD, at the request of Washington Department of Social and Health
5 Services.⁴² Dr. Morgan completed a thorough and detailed report which
6 included a clinical interview providing psychosocial history, treatment
7 history, educational/work history, and activities of daily living; clinical
8 findings; diagnosis; mental status examination observations; medical
9 source statement; and prognosis.⁴³
10

11 Dr. Morgan noted that Plaintiff reported a history mental illness
12 worsening over time, as well as passive suicidal thoughts and feelings
13 of being overwhelmed.⁴⁴ Dr. Morgan noted clinical findings of
14 depression with depressed mood, anhedonia, lack of sleep, fatigue,
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17 ⁴⁰ AR 368.

18 ⁴¹ AR 369.

19 ⁴² AR 340-344.

20 ⁴³ *Id.*

21 ⁴⁴ AR 340.

1 feelings of worthlessness, and poor concentration and opined that it
2 was daily and moderate in severity.⁴⁵ On examination, Dr. Morgan
3 found that Plaintiff had normal speech and affect, depressed mood,
4 limitations in memory and concentration, normal perception and fund
5 of knowledge, and normal judgement and insight.⁴⁶
6

7 Dr. Morgan opined that Plaintiff would have moderate
8 limitations in understanding, remembering, and persisting in tasks;
9 performing activities within a schedule; learning new tasks,
10 performing tasks without special supervision; adapting to changes in a
11 work setting; asking simple questions; communicating or performing in
12 a work setting; maintaining appropriate behavior; completing a normal
13 work week or workday; and setting realistic goals or planning
14 independently.⁴⁷ Dr. Morgan opined that the limitations would last 8
15 months.⁴⁸
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19 ⁴⁵ AR 341.

20 ⁴⁶ AR 343-344.

21 ⁴⁷ AR 341-342.

22 ⁴⁸ AR 342.
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1 On November 24, 2021, Plaintiff was examined by David
2 Krueger, MD, regarding cardiovascular symptoms.⁴⁹ Dr. Krueger noted
3 that he had problems with short-term memory as a result of sleep
4 apnea and suffered from depression and anxiety as well.⁵⁰
5

6 On December 8, 2021, Plaintiff presented for follow-up with
7 Jennifer Wilson, ARNP.⁵¹ He was noted to suffer from depression and
8 anxiety.⁵²

9 On February 9, 2022, Plaintiff presented for follow-up with ARNP
10 Wilson.⁵³ ARNP Wilson noted that Plaintiff presented with complaints
11 of anxiety, depression and nicotine addiction.⁵⁴ She noted that Plaintiff
12 reported depression with a fluctuating loss of interests.⁵⁵ Plaintiff
13

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15 ⁴⁹ AR 4134.

16 ⁵⁰ AR 416.

17 ⁵¹ AR 426.

18 ⁵² *Id.*

19 ⁵³ AR 421.

20 ⁵⁴ AR 423.

21 ⁵⁵ *Id.*

1 reported difficulty sleeping, feelings of hopelessness and helplessness,
2 but no changes in appetite or difficulty concentrating.⁵⁶ On mental
3 status examination, Plaintiff had an anxious mood and affect, but had
4 intact memory, attention, thought process, and fund of knowledge.⁵⁷ He
5 complained of worsening depression and anxiety.⁵⁸ ARNP Wilson
6 diagnosed moderate recurrent major depression, noting, “depression
7 symptoms include depressed mood most of the day for the past two
8 weeks, loss of Interest In activities, hypersomnia, fatigue, feelings of
9 worthlessness and inappropriate guilt, significant weight gain, and
10 recurrent thoughts of being better off dead. These symptoms cause
11 significant impairment and there is no evidence of another medical,
12 psychological, or substance use disorder to better explain symptoms.”⁵⁹
13
14 She also diagnosed generalized anxiety disorder, noting “[a]nxiety
15 symptoms include excessive anxiety and worry that occur more days
16
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19 ⁵⁶ *Id.*

20 ⁵⁷ AR 424.

21 ⁵⁸ *Id.*

22 ⁵⁹ AR 425.

1 than not for the last 6 months, difficulty controlling worry, feeling
2 keyed up and on edge, feeling easily fatigued, and irritability.”⁶⁰

3 On March 17, 2022, Plaintiff presented to Sunny Bhaskaran, MD,
4 for follow-up for the results of sleep testing.⁶¹ Dr. Bhaskaran noted that
5 Plaintiff had been diagnosed previously with narcolepsy.⁶² He also
6 noted on examination that Plaintiff was positive for depression and
7 panic attacks.⁶³

8
9 The ALJ acknowledged that Dr. Morgan opined Plaintiff had
10 moderate limitations in many areas of function but noted that
11 Dr. Morgan opined the limitations would last at least 8 months.⁶⁴ But
12 the ALJ’s finding that this supported a conclusion that Plaintiff was
13 not disabled for a period of 12 months is flawed. First, Dr. Morgan did
14 not examine Plaintiff at the request of the Commissioner, but rather at
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17 ⁶⁰ *Id.*

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19 ⁶¹ AR 459.

20 ⁶² AR 461.

21 ⁶³ AR 462.

22 ⁶⁴ AR 21, quoting 342.

1 the request of DSHS, so the issue presented to him was not whether
2 Plaintiff was expected to have the opined limitations for a period of 12
3 months considered by the Commissioner but whether they would exist
4 for a period of 6 months, as considered by DSHS. Additionally, there is
5 no indication that Plaintiff was evaluated after the 8-month period to
6 determine whether the limitations continued.
7

8 On remand, the Court directs that the ALJ is to develop the
9 record by either obtaining a psychological consultative examination or
10 scheduling a medical expert to testify.
11

12 **C. Symptom Reports: This issue is moot.**

13 Plaintiff argues the ALJ failed to properly assess his subjective
14 complaints. Because the Court has remanded the case with direction
15 that the ALJ should further develop the record, the ALJ will be
16 required to re-evaluate Plaintiff's subjective complaints.
17

18 **D. Medical Opinions: This issue is moot.**

19 Plaintiff argues the ALJ failed to properly evaluate the medical
20 opinion evidence. Because the Court has remanded the case with
21 direction that the ALJ should further develop the record to obtain
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1 medical opinion evidence, the ALJ will be required to reassess the
2 medical opinions.

3 **E. Remand for Further Proceedings**

4 Plaintiff submits a remand for payment of benefits is warranted.
5
6 The decision whether to remand a case for additional evidence, or
7 simply to award benefits, is within the discretion of the court.”⁶⁵ When
8 the court reverses an ALJ’s decision for error, the court “ordinarily
9 must remand to the agency for further proceedings.”⁶⁶

10 The Court finds that further development is necessary for a
11 proper disability determination. Here, it is not clear what, if any, effect
12 Plaintiff’s mental impairments have on his ability to perform basic
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15 ⁶⁵ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v.*
16 *Heckler*, 761 F.2d 530 (9th Cir. 1985)).

17 ⁶⁶ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379
18 F.3d at 595 (“[T]he proper course, except in rare circumstances, is to
19 remand to the agency for additional investigation or explanation”);
20 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir.
21 2014).
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work tasks. It is also unclear what the exact classification of Plaintiff's PRW should be. Therefore, the ALJ should take testimony regarding Plaintiff's past work and obtain testimony from a vocational expert to classify his PRW, consider whether a psychological consultative examination should be scheduled or whether testimony should be received from a medical expert pertaining to Plaintiff's mental impairments, consider any additional evidence presented, and make findings at each of the five steps of the sequential evaluation process.

IV. Conclusion

Accordingly, **IT IS HEREBY ORDERED:**

1. The ALJ's nondisability decision is **REVERSED**, and this matter is **REMANDED** to the Commissioner of Social Security for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 8 and 9**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

1 IT IS SO ORDERED. The Clerk's Office is directed to file this
2 order and provide copies to all counsel.

3 DATED this 19th day of May, 2025.

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6 EDWARD F. SHEA
7 Senior United States District Judge
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